

Exhibit 8

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of Plaintiffs' Motion for Summary
Judgment as to Defendant Mylan

(Dep. Exs. 12 and 42 – Filed Separately Under Seal)

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CAUSE NO. D-1-GV-07-001259

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
201st JUDICIAL DISTRICT

THE STATE OF TEXAS

ex rel.

VEN-A-CARE OF THE
FLORIDA KEYS, INC.

Plaintiffs,

v.

SANDOZ INC. f/k/a GENEVA
PHARMACEUTICALS, INC.,
EON LABS,

MYLAN PHARMACEUTICALS,
INC., MYLAN LABORATORIES,
INC., UDL LABORATORIES, INC.

TEVA PHARMACEUTICALS USA,
INC. f/k/a LEMMON
PHARMACEUTICALS, INC.,
COPLEY PHARMACEUTICALS, INC.,
IVAX PHARMACEUTICALS, INC.,
SICOR PHARMACEUTICALS,
INC., and TEVA NOVOPHARM, INC.,

Defendants.

DEPOSITION OF ROBERT POTTER, called as a
witness by counsel for the Defendants, pursuant to
the provisions of Texas Rules of Civil Procedure,
before Christine M. Ferraro, Court Reporter in and
for the State of Rhode Island, taken at Esquire
Deposition Services, Ten Weybosset Street,
Providence, Rhode Island, on November 25, 2008,
commencing at 9:13 a.m.
commencing at 9:13 a.m.

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1 MR. PIERCE: Can we look at
2 Exhibit 10? Have Mr. Potter look at
3 Exhibit 10.

4 MR. MERKL: Here.

5 THE WITNESS: That's 11. 10.

6 MR. MERKL: Oh.

7 MR. PIERCE: At 10.

8 BY MR. PIERCE:

9 Q. I believe Exhibit 10, we were looking at
10 the table, it was private pay. Help me
11 with the -- help me with the title. I
12 believe Exhibit 10 was the private pay
13 reimbursement comparison worksheet. Part
14 of it was, correct?

15 A. Correct.

16 Q. Exhibit 11 involves also Drug 7, which we
17 know is Nifedipine, correct?

18 A. Correct.

19 Q. And this one is entitled: "Medicaid
20 Reimbursement Comparison Summary,"
21 correct?

22 A. Correct.

23 Q. Why would Mylan Pharmaceuticals be
24 interested in making a Medicaid

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1 reimbursement comparison summary for
2 Nifedipine, if you know?

3 A. I don't know.

4 Q. Okay.

5 (Exhibit No. 12 marked for
6 identification.)

7 BY MR. PIERCE:

8 Q. You can keep 11 in front of you, but let
9 me show you 12.

10 A. Are you done with 10?

11 Q. I'm done with 10. I just needed to make
12 sure I correctly identified the title on
13 that chart.

14 A. I wish I was selling paper, and stickers.

15 Q. Potter Exhibit 12, three pages, same
16 question. These three pages, do they not
17 indicate medicaid reimbursement comparison
18 worksheets generated by Mylan for
19 Nifedipine?

20 A. It appears to be, yes.

21 Q. And they make calculations, generic
22 reimbursement criteria on Page 1, Page 2,
23 and Page 3, where they determine a
24 profited invoice and a profited net; do

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1 they not?

2 A. On the last line?

3 Q. Yes, sir.

4 A. See, you're not highlighting them for me.

5 Q. I'm sorry.

6 A. Yes.

7 Q. On each of those tables. Do you know why
8 Mylan would be interested in undergoing
9 this type of analysis?

10 A. No.

11 Q. Okay. That's all I need since you don't
12 know.

13 MR. MERKL: 11 too?

14 MR. PIERCE: What's the
15 question?

16 MR. MERKL: 11 also, are we done
17 with 11 and 12?

18 MR. PIERCE: Yes, sir. We're
19 done with all of those. I'm moving on to
20 13.

21 MR. MERKL: Okay. The good
22 ones. Well, we've got about, what, 400
23 drugs, so...

24 MR. PIERCE: We're still on

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1 Q. All right. So you agree that according to
2 this pricing strategy put out by Mylan for
3 Nifedipine that their pricing strategy
4 involved maximizing the reimbursement
5 profitability for the pharmacy?

6 MR. MERKL: Objection to form.

7 A. It appears to be, yes.

8 BY MR. PIERCE:

9 Q. All right. Thank you. How does Mylan
10 maximize the reimbursement profitability
11 of the pharmacy?

12 A. I don't know.

13 Q. Do they manipulate the AWP's to do that?

14 A. No.

15 Q. Do they manipulate the WAC's to do that?

16 A. I don't know.

17 (Exhibit No. 17 marked for
18 identification.)

19 BY MR. PIERCE:

20 Q. Okay. Let me show you what's been marked
21 as Exhibit 17. Have you ever seen this
22 document before?

23 A. Not that I can recall, no.

24 Q. Have you ever seen a document like this

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1 Q. Can you tell us, as a salesman in Mylan
2 Pharmaceuticals, your understanding of why
3 Mylan Pharmaceuticals would want to change
4 AWP's?

5 A. No.

6 (Exhibit No. 18 marked for
7 identification.)

8 BY MR. PIERCE:

9 Q. Let me show you what's been marked as
10 Exhibit 18.

11 A. Okay.

12 Q. Exhibit 18, is it not a memo from Hillary
13 Johnson, dated September 22nd, 2000, to
14 Lexanna Seifert also?

15 A. Yes.

16 Q. And Hillary Johnson is whom, if you know?

17 A. She worked in Pricing and Contracts as
18 well.

19 Q. All right. Now, this is in 2000. Does it
20 also involve AWP changes?

21 A. Yes.

22 Q. And does it have attached a list of
23 numerous Mylan products that show an old
24 AWP and a new AWP effective July 28th,

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1 2000?

2 A. Correct.

3 Q. All right. And are all those products'
4 AWP's raised?

5 A. Yes.

6 Q. And do you know why AWP is being raised by
7 Mylan Pharmaceuticals at this period of
8 time, September of 2000, effective --
9 excuse me, July 28th, 2000?

10 A. I do not.

11 Q. Is there any reason that you can think of
12 that they would be raising AWP's, other
13 than to affect or otherwise manipulate the
14 spread of their customer pharmacies for
15 reimbursement purposes?

16 MR. MERKL: Objection to form.

17 A. I do not.

18 BY MR. PIERCE:

19 Q. Do you know why they're sending this
20 information to salesmen?

21 A. Because the customers sometimes always ask
22 for our most accurate up-to-date AWP
23 prices.

24 Q. And do you have any idea, based on your

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1 Q. All right.

2 A. I may have said we get our prices in, but
3 I don't know how they do that.

4 (Exhibit No. 42 marked for
5 identification.)

6 BY MR. MILLER:

7 Q. Okay. Well, Exhibit 42.

8 A. Perfect.

9 Q. I'm just -- I'm just -- you go ahead and
10 read it, but I'll describe it for the
11 record, and Exhibit 42 is an e-mail string
12 starting with Steve -- well, not starting
13 with, I guess ending with, in some way,
14 Steve Krinke, dated September 30th, 2004,
15 to John Kerr, Bob Potter. Subject:
16 Medicaid States - Pricing Update Frequency
17 Schedule.

18 A. Okay.

19 Q. Did you have a chance to read this thing?

20 A. Yes.

21 Q. Okay. Now, do you remember ever seeing
22 this before?

23 A. No.

24 Q. Do you remember any of the information

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1 that's contained on it?

2 A. I do not.

3 Q. All right. And in this memo, isn't it
4 accurate -- isn't it accurate that Mylan
5 is keeping track not only of state
6 reimbursement, but how often they update
7 their databases and how often they do
8 reporting, correct?

9 A. Yes.

10 Q. So you guys are even going down -- let's
11 see, you even have, "California receives
12 pricing data on the 27th of each month,"
13 correct?

14 MR. MERKL: Objection to form.

15 A. Correct.

16 BY MR. MILLER:

17 Q. Okay. It says, "New York receives and
18 activates pricing data between the 15th
19 and 17th of each month," correct?

20 A. That's what it says, correct.

21 Q. Okay. And then it goes on to say, "Ohio
22 receives pricing data on the first
23 Wednesday of every month and activates
24 within 7 - 10 days." That's pretty

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1 detailed knowledge of state reimbursement,
2 isn't it?

3 A. Yes.

4 Q. And this was being sent to you, wasn't it?

5 A. Yes.

6 Q. You're not just cc'd on it, this was sent
7 to you?

8 A. Correct.

9 Q. Why?

10 A. Just to update.

11 Q. Why would they update you on such minutia
12 of state Medicaid reimbursement
13 scheduling?

14 A. Just to make sure it was -- we knew it was
15 in the system for our customers.

16 Q. Do the customers call you and ask you when
17 the states reimbursed?

18 A. They only call if it's not being
19 reimbursed.

20 Q. And so what would happen, they call and
21 say I'm not being reimbursed, what do you
22 do?

23 A. Forward it to Steve and say, The customers
24 are complaining they're not being